

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UBALDO BOJORQUEZ-CARO,

Case No. 12-cv-2638-W
08-cr-3698-W

Defendant-Petitioner,

ORDER DENYING DEFENDANT-PETITIONER'S MOTION TO VACATE UNDER 28 U.S.C. § 2255 [DOC. 60]

UNITED STATES OF AMERICA,

Respondent.

Pending before the Court is Petitioner Ubaldo Bojorquez-Caro’s motion for habeas corpus relief under 28 U.S.C. § 2255. Petitioner is proceeding *pro se*. Respondent United States of America (“Government”) opposes. (Doc. 64.) Petitioner did not file a reply to the Government’s opposition. The Court decides the matter on the papers submitted and without oral argument. See Civil L.R. 7.1(d.1).

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1 The Court has reviewed the petition, the Government's opposition, and the
 2 relevant records on the docket. The record establishes that on February 3, 2010,
 3 Petitioner signed a Sentencing Agreement waiving "any right to appeal or to collaterally
 4 attack the conviction and sentence" in exchange for certain Government concessions.
 5 (Sentencing Agreement ¶ H.) Petitioner does not raise any challenge to the validity
 6 of that waiver. Additionally, having reviewed the sentencing agreement and transcript,
 7 the Court finds that Petitioner knowingly and voluntarily waived his right to appeal and
 8 collaterally attack his conviction and sentence. (See id. ¶ J.) Consequently, this Court
 9 lacks jurisdiction to consider any collateral challenge to his conviction and sentence.¹
 10 See United States v. Harris, 628 F.3d 1203, 1205 (9th Cir. 2011) (recognizing that a
 11 court will not exercise jurisdiction to review the merits of an appeal if the court
 12 concludes that the defendant knowingly and voluntarily waived the right to bring the
 13 appeal).

14 In light of the foregoing, the Court **DENIES** Petitioner's motion for habeas
 15 corpus relief under 28 U.S.C. § 2255. (Doc. 60.)

16 **IT IS SO ORDERED.**

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 18 **DATE: November 25, 2013**

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 21 **HON. THOMAS J. WHELAN**
 22 United States District Court
 23 Southern District of California

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 25 ¹ The Government also argues that Petitioner's motion lacks merit and is time-barred
 26 pursuant to the one-year statute of limitations of 28 U.S.C. § 2255. Because the Court finds
 27 Petitioner validly waived his statutory right to collaterally attack his conviction and sentence
 28 under the Sentencing Agreement and that it lacks jurisdiction to consider any collateral
 challenge, the Court need not address the Government's alternative arguments. See
Washington v. Lampert, 422 F.3d 864, 869 (9th Cir. 2005) (recognizing that if sentencing
 agreement's waiver of the right to file a federal habeas petition was valid, district court lacked
 jurisdiction to hear the case); see also Blanco v. United States, No. 07-CR-3151, 2009 WL
 1117850, at *1 (S.D. Cal. Apr. 24, 2009) (Lorenz, J.).